

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 02-0237

Sales & Use Tax

For the Calendar years 1998, 1999, & 2000

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superceded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. **Tax Administration** – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

The taxpayer protests the late penalty.

II. **Tax Administration** - Interest

Authority: IC 6-8.1-10-1

The taxpayer protests the interest assessment.

STATEMENT OF FACTS

The late penalty and interest were assessed on a Department audit covering the periods 1998, 1999, and 2000.

The taxpayer is a company located out-of-state.

I. **Tax Administration** – Penalty

DISCUSSION

The taxpayer requests the penalty be waived as the error was (1) unintentional, (2) the error was only 5%, and (3) the taxpayer has implemented a self-assessing use tax system since the audit.

With regard to the 5% error, the amount of the audit assessment was about \$200,000. The taxpayer remitted about \$90,000 in each year of the audit. This equates to a 40% error. The Department considers this error to be material.

With regard to the self-assessing use tax system, this system should be helpful to the taxpayer in the remittance of use tax in the future. However, with regard to the audit period in the instant case, the new use tax system was not in place, and therefore, is not a factor in the consideration of the waiver of penalty.

The regulation which provides the guideline for penalty is as follows:

45 IAC 15-11-2(b) states, "Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer."

The Department finds the taxpayer was inattentive of tax duties. As inattention is negligence and subject to penalty, the Department finds the penalty proper and denies the penalty protest.

FINDING

The taxpayer's penalty protest is denied.

II. Tax Administration – Interest

Interest may not be waived according to statute. IC 6-8.1-10-1.